

### **REMARKS**

The title is amended to reflect the amendments to the claims herein.

Claims 7, 9, 18 and 25 were pending in the application, and stand rejected.

The preamble of Claim 7 is amended herein to recite an antigen-antibody complex, which finds support at original Claim 15.

Dependent Claims 9 and 18 are amended in light of the amendment of independent Claim 7.

Claim 25 is canceled.

New Claims 32 – 34 are presented, which track the subject matter of Claims 7, 9, and 18, but recite an FDF03-S1 polypeptide comprising the mature sequence (residues 1 – 210) of SEQ ID NO: 6. Support is found, for example, at page 7, original Claim 2, and SEQ ID NOs: 5 and 6 of the specification as-filed.

No new matter is added by way of amendment.

I. **Rejection under 35 U.S.C. §112, second paragraph**

Claims 7, 9, 18 and 25 were rejected as allegedly being indefinite because the preamble appeared to encompass a single entity (an antibody or fragment thereof), whereas the body of the claim seemed to relate to an antigen-antibody complex. Claim 25 is canceled herein. In compliance with the Examiner's suggestion, the preamble of Claim 7 is amended herein to clarify that the claim relates to an antigen-antibody complex. Accordingly, dependent Claims 9 and 18, as amended, also relate to antigen-antibody complexes, as do new Claims 32 – 34.

In light of these amendment to the claims, withdrawal of the rejection for indefiniteness is respectfully requested.

II. **Rejections under 35 U.S.C. §102**

Claims 7, 9, 18 and 25 were rejected under 35 U.S.C. §102(a) as allegedly being anticipated by **Adema et al. (WO 98/24906)**, as evidenced by Bost et al. (1988) *Immunol. Invest.* 17:577. Claim 25 is canceled herein.

In light of the present amendment of the claims to relate exclusively to an antigen-antibody complex, rather than a purified antibody or fragment thereof, Applicants reiterate the arguments originally presented in their response dated 18

September 2009. Specifically, because Adema *et al.* does not disclose a polypeptide consisting of the sequence of SEQ ID NO: 6, and because it does not disclose a polypeptide consisting of the sequence of residues 1 – 210 of SEQ ID NO: 6, it cannot anticipate Claims 7 and 32, both of which require the respective polypeptides as a component of the claimed complex. For the same reasons, Escobedo *et al.* does not anticipate dependent claims 9, 18, 33 and 34.

In light of the amendments to the claims, Applicants respectfully request withdrawal of the anticipation rejection based on Adema *et al.*

Claim 7 was rejected under 35 U.S.C. §102(e) as allegedly being anticipated by **Escobedo *et al.*** (U.S. Pat. App. Pub. No. 2002/0076761). The claims, as amended or newly presented herein, recite complexes of antibodies or fragments thereof with either a polypeptide consisting of the sequence of SEQ ID NO: 6 or a polypeptide consisting of the sequence of residues 1 – 210 of SEQ ID NO: 6. Because Escobedo *et al.* does not disclose a polypeptide consisting of the sequence of SEQ ID NO: 6, nor does it disclose a polypeptide consisting of the sequence of residues 1 – 210 of SEQ ID NO: 6, it cannot anticipate Claim 7 or new Claim 32, both of which require the respective polypeptides as a component of the claimed complex.

Because Escobedo *et al.* does not disclose the polypeptides recited in the claims as amended herein, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §102(e).

### III. Rejection under 35 U.S.C. §103(a)

Claims 7, 9, 18 and 25 were further rejected under 35 U.S.C. §103(a) as allegedly being obvious over Escobedo *et al.* in view of **Harlow *et al.*** (Antibodies: A Laboratory Manual, 1988, pages 139-147 and 626-630) and **Campbell** (Monoclonal Antibody Technology, 1985, Elsevier Science Publishers, Chapter 1, pages 1-32). Claim 25 is canceled herein.

Harlow *et al.* and Campbell are cited to supply elements of Claims 9, 18 and 25 that were missing from Escobedo *et al.* However, for the reasons discussed above, Escobedo *et al.* does not disclose the specific polypeptides of Claim 7 as amended herein, nor the specific polypeptides of new Claim 32, and neither do Harlow *et al.* or

Campbell. In addition, no argument has been provided that any of Escobedo *et al.*, Harlow *et al.*, or Campbell, alone or in combination, renders obvious the antigen-antibody complexes (as presently claimed), each of which comprises a specific FDF-03 S1 polypeptide.

Because the cited references do not support a *prima facie* case of obviousness of the claims as amended herein, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §103(a).

### **Conclusion**

Applicants' current response is believed to be a complete reply to all the outstanding issues of the latest Office action. Further, the present response is a *bona fide* effort to place the application in condition for allowance or in better form for appeal. Accordingly, Applicants respectfully request reconsideration and passage of the amended claims to allowance at the earliest possible convenience.

Applicants hereby authorize the Office to charge any fees that may be due, and to credit any refunds, to Deposit Account No. 04-1239.

If the Examiner believes that a telephonic conference would aid the prosecution of this case in any way, please call the undersigned.

Respectfully submitted,

Date: 2 April 2010

By: /Gregory R. Bellomy/  
Gregory R. Bellomy, Reg. No. 48,451  
Attorney for Applicants

**Customer No. 028008**  
MERCK, C/O DNAX  
901 California Avenue  
Palo Alto, CA 94304-1104  
Telephone (Switchboard): (650) 496-6400  
Telephone No. (Direct): (650) 496-6565  
Facsimile No.: (650) 496-1200